

123 FERC ¶ 61,311
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New Harquahala Generating Company, LLC

Docket No. RC08-4-001

ORDER GRANTING REQUEST FOR CLARIFICATION

(Issued June 27, 2008)

1. In a May 16, 2008 order, the Commission denied an appeal by New Harquahala Generating Company, LLC (Harquahala) challenging a finding by the North American Electric Reliability Corporation (NERC) that Harquahala was properly included on the NERC compliance registry as a transmission owner and transmission operator.¹ To resolve disputes about the applicability of the transmission owner and transmission operator Reliability Standards, the Commission directed NERC and Harquahala to negotiate regarding the Reliability Standards and Requirements that will be applicable to Harquahala. The Commission directed NERC to submit, within 60 days from the date of the issuance of the order, a compliance filing identifying the applicable Requirements. Harquahala seeks clarifications, or in the alternative rehearing, on one aspect of the Commission-directed negotiations. As discussed below, the Commission grants Harquahala's request for clarification.

I. May 16 Order

2. In the May 16 Order, the Commission concluded that NERC and the Western Electricity Coordinating Council (WECC), a Commission-approved Regional Entity, "adequately supported the registration of Harquahala as a transmission owner and transmission operator pursuant to NERC's plenary authority to register entities that own or operate assets that are 'material to the reliability of the bulk power system.'"² The Commission affirmed NERC's and WECC's findings, "based on the specific facts of this

¹ *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 (2008) (May 16 Order).

² May 16 Order, 123 FERC ¶ 61,173 at P 44.

case, that the reliable operation and maintenance of the interconnection facilities that connect the Harquahala generator to Hassayampa [Switchyard] are necessary to the reliability of the Bulk-Power System.”³

3. In reaching its determination, the Commission indicated that “if Harquahala is not required to comply with at least some of the Reliability Standards applicable to a transmission owner and operator, there will be reliability gaps . . .”⁴ The Commission identified specific areas of concern such as coordination of protection systems, operations, maintenance and restoration of Harquahala’s transmission facilities. In the discussion, the Commission referenced Reliability Standards that pertain to these topics.

4. In a separate section of the order, the Commission recognized Harquahala’s concerns that it is physically unable to comply with all Reliability Standards applicable to transmission owners and operators and NERC’s commitment to work with Harquahala to develop a list of applicable requirements.⁵ To resolve the matter, the order stated:

the Commission directs NERC and Harquahala to negotiate regarding the Reliability Standards and Requirements that will be applicable to Harquahala. We direct NERC to submit, within 60 days from the date of the issuance of this order, a compliance filing identifying the applicable Requirements. Harquahala will have the ability to comment on NERC’s filing. In the event that NERC and Harquahala cannot agree on which Reliability Standards apply, the parties should explain their disagreement and the Commission will resolve the dispute, based on the language of the Reliability Standards and the reliability risks posed by Harquahala’s facilities.[⁶]

II. Harquahala’s Request for Clarification

5. Harquahala seeks clarification, or in the alternative rehearing, regarding the Commission’s intent in listing specific requirements of Reliability Standards in the discussion of the “reliability gap” that would occur if Harquahala is not registered as a transmission owner and operator. Harquahala states its belief that the identification of specific requirements of Reliability Standards was for illustrative purposes, and not intended to mandate Harquahala’s compliance with those requirements. Harquahala believes that the Commission, in directing negotiations regarding which transmission

³ *Id.*

⁴ *Id.* P 52-54.

⁵ *Id.* P 56.

⁶ *Id.* P 57.

owner and operator Reliability Standards Harquahala is capable of complying with, did not pre-judge which Reliability Standards should apply and did not preclude Harquahala from negotiating with NERC regarding whether Harquahala is capable of complying with the requirements of the Reliability Standards referenced in the May 16 Order.

III. Commission Determination

6. The Commission grants Harquahala's request for clarification. Without qualification or limitation on the universe of applicable Reliability Standards, the May 16 Order directed Harquahala and NERC to negotiate which Reliability Standards and Requirements would apply to Harquahala. The Commission will review NERC's compliance filing identifying the applicable Requirements, and any comments filed by Harquahala, based on the language of the Reliability Standards, the reliability risks posed by Harquahala's facilities and Harquahala's physical ability to comply with the Reliability Standards.

The Commission orders:

Harquahala's request for clarification is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.